The Pacific Northwest Packing Co. v. *Allen* (1902), — C. C. A. —, 116 Fed. Rep. 312.

Said the court: "All the property mentioned, constituting the material parts of the entire plant, and embracing the real estate, franchises, and personal property, are so essentially blended and intermingled as to render each indispensable to the value of the other, so that they cannot be separated without material injury to the value of the other parts." The general rule is that the statutory right of redemption, and right to sale in separate parcels, does not extend to the real estate of a corporation authorized to acquire, hold, and use property for public purposes. *Hammock* v. *Trust Co.*, 105 U. S. 77, 26 L. Ed. 1111; *Sioux City Terminal R. and Warehouse Co.* v. *Trust Co. of North America*, 27 C. C. A. 73, 82 Fed. 124, 137; *McKenzie* v. *Water Co.*, 6 N. D. 361, 379, 71 N. W. 608, 614; *National Foundry & Pipe Works* v. *Oconto Water Co.*, 52 Fed. 43, 45; *Simmons* v. *Taylor*, 38 Fed. 682, 694, per Shiras J.; *Farmers' Loan & Trust Co.* v. *Iowa Water Co.*, 78 Fed. 881, 889, et seq. In the present case, however, the court bases its decision, not on the public, or quasi public, character of the corporation whose property is to be sold, but on the necessity arising from the condition and character of the property mortgaged. "Separation of the real estate . . . would destroy the efficiency and value of the whole."

MUNICIPAL CORPORATIONS—EMINENT DOMAIN—COMPENSATION TO ABUTTING OWNERS.—Action in equity temporarily to restrain defendants from erecting telephone poles in front of plaintiff's property in the city of Langdon, N. D. Plaintiff owned the fee to the middle of the street subject only to the public easement under the dedication of the streets and alleys of the city for public uses. By ordinance the city granted a telephone franchise to the defendants but was silent upon the subject of compensation to abutting owners. Defendants urged that they were exercising public functions, that the poles did not constitute an additional servitude, and that, moreover, plaintiff had a complete remedy in damages at law. *Held*, that telephone poles did constitute an additional servitude and that plaintiff might restrain their erection. *Donovan* v. *Allert* (1902), — N. Dak. —, 91 N. W. Rep. 441.

In a similar action in Ohio, where the plaintiff's right in the street was found to be the same, but the defendant corporation had no express permission to enter the street, *Held*, that the pole constituted an additional servitude and its erection might be permanently enjoined, *Callen* v. *Columbus Edison Electric Light Co.* (1902), — Ohio St. —, 64 N. E. Rep. 141.

In the first case in answering what a public use so contemplated by the dedication was, the court said that the primary use of a street or highway is confined to travel and transportation. That in a sense, the use of a telephone company was a public one in that it had public rights which the law would enforce, but that these rights could only be obtained by paying for them. "There is no reason in law or in common justice why it should not pay for what it needs in the prosecution of its business."

To the defendant's objection that the plaintiff had a legal remedy, the court declared that the taking or damaging of private property for public use was so serious that payment as compensation for losses was made a prerequisite and consequently that plaintiff had a right to a preliminary injunction.

The cases upon this subject—as to whether the erection of telephone, telegraph or electric light poles in a street is an additional servitude, not contemplated by the dedication and for which the abutting owner may demand compensation, are in conflict. The cases which hold it to be an additional servitude are *Krueger* v. *Wisconsin Teleph. Co.* (Wis.) 50 L. R. A. 298;

Metropolitan Teleph. & Teleg. Co. v. *Colwell Land Co.*, 18 Jones & Spen. 488; *Broome* v. *N. Y. & N. J. Teleph. Co.*, 42 N. J. Eq. 141; *Western U. Teleg. Co.* v. *Williams*, 86 Va. 696; *Chesapeake and P. Telegraph Co.* v. *Mackenzie*, 74 Md. 36; *Daily* v. *State*, 51 Oh. St. 348; *Stowers* v. *Postal Teleg. Cable Co.*, 68 Miss. 559; *Board of Trade Teleg. Co.* v. *Barnett*, 107 Ill. 507; *Jaynes* v. *Omaha Street Rwy. Co.*, 53 Neb. 631.

The following cases, however, hold the contrary:—*Pierce* v. *Drew*, 136 Mass. 75; *Irwin* v. *Great Southern Teleph. Co.*. 37 La. Ann. 63; *Rugg* v. *Commercial U. Teleg. Co.* 66 Vt. 208; *Cater* v. *Northwestern Teleph. Exchange Co.*, 60 Minn. 539; *People* v. *Eaton*, 100 Mich. 208; *Julia Bldg. Ass'n.* v. *Bell Teleph. Co.*, 88 Mo. 258; *Hershfield* v. *Rocky Mt. Bell Teleph. Co.*, 12 Mont. 102; *Magee* v. *Overshimer*, 150 Ind. 127; *Taggart* v. *Newport St. Ry. Co.*, 16 R. I. 668.

DILLON ON MUNICIPAL CORPORATIONS, Vol. II. § 698 1 expresses the better view when he says, "On the whole, the safer and perhaps sounder view is that such a use of the street or highway, attended as it may be especially in cities with serious damage and inconvenience to the abutting owner, is not a street or highway use proper, and hence entitles such owner to compensation for such use, or for any actual injury to his property caused by poles and lines of wire placed in front thereof."

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE OF PARENTS NOT IMPUTED TO THE CHILD.—A father instructed his son, who was four years and three months old, to go between cars on a railroad track; the child's foot was caught because of a defective crossing, and he was injured by a passing train. He sued by his guardian ad litem. *Held*, that he could recover. *Eskildsen* v. *City of Seattle* (1902),— Wash, — 70 Pac. Rep. 64.

The weight of authority among the American cases seems to be with this case; however there is a strong line of cases, both in England and the United States to the effect, that when a child is negligently permitted by its parents or guardian to stray on a thoroughfare or a railroad track, this negligence may be regarded, even where the child brings suit through a guardian or prochein ami, as the contributory negligence of the child. *Singleton* v. *E. C. R. R.*, 7 C. B. (N. S.) 287; *Mangan* v. *Atherton*, L. R. 1 Exch. 239; *Brown* v. *R. R.*, 58 Me. 384; *Leslie* v. *Lewiston*, 62 Me. 384; *Holly* v. *Gas Co.*, 8 Gray 123; *Callahan* v. *Bean*, 9 Allen 401; *Lehman* v. *Brooklyn*, 29 Barb. 234; *Ewen* v. *R. R.*, 38 Wis. 613.

The leading case in this country is *Hatfield* v. *Roper*, 21 Wend. 615. 34 Am. Dec. 273.

Although these courts have adhered more or less closely to this rule, there is a strong tendency to confine it strictly and not in anywise to extend it. BEACH ON CONTRIBUTORY NEGLIGENCE, § 122.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—RAILROADS.—Plaintiff stepped on defendant's tracks 600 feet from a station, where a train was then standing. The view was unobstructed. Plaintiff then walked away between the rails in the direction in which such train was about to go, without looking back, or using any of her senses to ascertain the approach of the train, and while so walking was struck by the train and injured. The agents of the company did not see her. *Held*, that plaintiff might recover. *Denver and Rio Grande R. R.* v. *Buffehr* (1902), — Colo. —, 69 Pac. Rep. 582.

There is much conflict upon this point. It is however generally held that a railroad company is not bound to keep a lookout for trespassers upon its tracks. 3 *Elliott on Railroads*, § 1257; *Burg* v. *Railroad Co.* 90 Iowa 106.